

(1) [Reserved]

(2) Testing of a reasonable number of exhaust systems (i) for purposes of selective enforcement auditing under § 205.171, or (ii) if the manufacturer has failed to establish that there is a correlation between its test facility and the EPA test facility, or (iii) the Administrator has reason to believe, and provides the manufacturer with a statement of such reason, that the exhaust systems to be tested would fail to meet the standard prescribed in this subpart if tested at the EPA test facility, even though they would meet such standard if tested at the manufacturer's test facility;

(3) Any testing performed during a period when a notice of non-conformance of the manufacturer's test facility issued pursuant to paragraph (b) of this section is in effect;

(4) Any testing performed at a place other than the manufacturer's facility as a result of the manufacturer's failure to permit the Administrator to conduct or monitor testing as required by this subpart; and

(5) In addition to any exhaust systems included in paragraphs (c) (2), (3), or (4) of this section, testing of up to 10 percent of the manufacturer's exhaust systems for a model year if the Administrator determines testing these exhaust systems at the EPA test site is necessary to assure that a manufacturer has acted or is acting in compliance with the Act.

(Secs. 11 and 13 of the Noise Control Act (42 U.S.C. 4910, 4912); 42 U.S.C. 4905; 86 Stat. 1237 and secs. 6, 10, 11, 13, Pub. L. 92-574, 86 Stat. 1234 (42 U.S.C. 4905, 4909, 4910, 4912))

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§ 205.171 Selective enforcement auditing (SEA) requirements.

§ 205.171-1 Test request.

(a) The Administrator will request all testing under § 205.171 by means of a test request addressed to the manufacturer.

(b) The test request will be signed by the Assistant Administrator for Enforcement or his designee. The test request will be delivered to the plant

manager or other responsible official as designated by the manufacturer.

(c) The test request will specify the exhaust system category, model and model year of motorcycle selected for testing, the manufacturer's plant or storage facility from which the exhaust systems must be selected, the method of selection and the time at which the exhaust systems must be selected. The test request will also provide for situations in which the selected exhaust system is unavailable for testing. The test request may include an alternative exhaust system category designated for testing in the event that exhaust systems of the first specified category are not available for testing because the exhaust systems are not being manufactured at the specified plant or are not being manufactured during the specified time or are not being stored at the specified plant or storage facility.

(d)(1) If the manufacturer projects a yearly production of fewer than 50 exhaust systems of the specified category to be tested, then, within five (5) days of receipt of the request, the manufacturer must notify the Administrator of such low volume production. The Administrator will then provide a revised test request specifying a testing plan which imposes no greater risk of failure (5%) at the acceptable quality level (10%) than the plan in appendix II. Upon receipt of the revised test request, the manufacturer must select and test a sample of exhaust systems from the category specified in the test request in accordance with this subpart and the conditions specified in the test request.

(2) If the manufacturer produces 50 or more of the specified category, then, upon receipt of the test request, the manufacturer must select and test a sample of exhaust systems for the category specified in the test request in accordance with this subpart and the conditions specified in the test request.

(e)(1) Any testing conducted by the manufacturer under a test request must be initiated within the time period specified in the test request; except that initiation may be delayed for increments of 24 hours or one business day where ambient test site weather conditions, or other conditions beyond

the control of the manufacturer, in that 24-hour period do not permit testing. The manufacturer must record the conditions for this period.

(2) The manufacturer must complete noise emission testing on a minimum of ten exhaust systems per day unless otherwise provided by the Administrator or unless ambient test site conditions permit only the testing of a lesser number, in which event the ambient test site weather conditions for that period must be recorded.

(3) The manufacturer is allowed 24 hours to ship exhaust systems from a sample from the assembly plant to the testing facility if the facility is not located at the plant or in close proximity to the plant. The Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) The Administrator may issue an order to the manufacturer to cease distribution in commerce of exhaust systems of a specified category being manufactured at a particular facility if:

(1) The manufacturer refuses to comply with the provisions of a test request issued by the Administrator under this section; or

(2) The manufacturer refuses to comply with any of the requirements of this section.

(g) A cease distribution order will not be issued under paragraph (f) of this section if the manufacturer's refusal is caused by conditions and circumstances outside his control which render compliance with the provisions of a test request or with any other requirements of this section impossible. Conditions and circumstances outside the control of the manufacturer include, but are not limited to, the temporary unavailability of equipment and personnel needed to conduct the required tests, caused by uncontrollable factors such as equipment breakdown or failure or illness of personnel. Failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests does not constitute uncontrollable factors. The manufacturer must bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(h) Any order to cease distribution will be issued only after notice and opportunity for a hearing in accordance with 5 U.S.C. 554.

§ 205.171-2 Test exhaust system sample selection and preparation.

(a)(1) Exhaust systems comprising the sample which are required to be tested under a test request in accordance with this subpart must be selected consecutively as they are produced.

(2) Test motorcycles and test exhaust systems to be used for testing of exhaust systems must be of the subject class which has been assembled using the manufacturer's normal production processes, in stock configuration including exhaust system, as sold or offered for sale in commerce.

(3) Before the official test, the test motorcycle and test exhaust system must not be prepared, tested, modified, adjusted, or maintained in any manner unless such preparation, tests, modifications, adjustments or maintenance are part of the original equipment manufacturer's prescribed manufacturing and inspection procedures, and are documented in the manufacturer's internal motorcycle assembly and inspection procedures, or are required or permitted under this subpart, or are approved in advance by the Administrator.

(4) Equipment or fixtures necessary to conduct the test may be installed on the motorcycle, if such equipment or fixtures shall have no effect on the noise emissions of the motorcycle as determined by the measurement methodology.

(5) In the event of a motorcycle malfunction (i.e., failure to start, etc.) maintenance that is necessary may be performed to enable the vehicle to operate in a normal manner. This maintenance must be documented and reported in the final report prepared and submitted in accordance with this subpart.

(6) No quality control, quality assurance testing, assembly or selection procedures may be used on the test vehicle or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other motorcycles of that class which will be distributed